

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RAYMOND P. MARIOLLE

Plaintiff,

v.

VOLVO GROUP NORTH AMERICA, INC.,
et al.,

Defendants.

No. C-09-1209 MMC
No. C-09-4250 MMC

**ORDER STRIKING WITHOUT
PREJUDICE DOE 1 AMENDMENT AND
DOE 2 AMENDMENT FILED IN CIVIL
CASE NO. 09-1209**

REGINA LYNN MARIOLLE

Plaintiff,

v.

VOLVO GROUP NORTH AMERICA, INC.,
et al.,

Defendants

By order filed May 11, 2010, the Court approved the parties' stipulation to, inter alia, afford each plaintiff leave to amend his or her respective pleading, and set a deadline of May 21, 2010 for each plaintiff to file any such amended pleading.

On May 14, 2010, plaintiff Raymond P. Mariolle filed two documents, one such filing titled "Doe 1 Amendment to Complaint for Personal Injuries and Damages," by which he

purports to amend his complaint to substitute Wittke Waste Equipment in place of "Doe 1," and the other titled "Doe 2 Amendment to Complaint for Personal Injuries and Damages," by which he purports to amend his complaint to substitute Labrie Environmental Group in place of "Doe 2."¹

In federal court, "[a]s a general rule, the use of 'John Doe' to identify a defendant is not favored." See Gillespie v. Civiletti, 629 F. 2d 637, 642 (9th Cir. 1980). Even where a defendant is identified as a "Doe," when the plaintiff thereafter seeks to substitute a named defendant, the preferred practice is the filing of an amended complaint adding the new defendant and deleting the "Doe" defendant. See, e.g., Lindley v. General Elec. Co., 780 F. 2d 797, 801-02 (9th Cir.) (holding plaintiff properly substituted named defendant for "Doe" defendant where plaintiff filed amended complaint adding named defendant and eliminating "Doe" as party), cert. denied, 476 U.S. 1186 (1986). In accordance therewith, the Court's May 11, 2010 Order provides for the filing of an "amended complaint." (See Order, filed May 11, 2010, at 3.) Plaintiff Raymond P. Mariolle, however, has attempted to add new parties by the unauthorized means of filing an "amendment to" his complaint.

Accordingly, "Doe 1 Amendment to Complaint for Personal Injuries and Damages" and "Doe 2 Amendment to Complaint for Personal Injuries and Damages" are hereby STRICKEN, without prejudice to Raymond P. Mariolle's filing a First Amended Complaint no later than May 21, 2010.

IT IS SO ORDERED.

Dated: May 19, 2010


MAXINE M. CHESNEY
United States District Judge

¹To date, Regina Lynn Mariolle has not taken any steps to amend her First Amended Complaint.